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Cases, Regulations, and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

FENCES. A fence had been constructed by previous owners of the defendant's property a few feet within the legal boundary of the land. The plaintiff asserted title by adverse possession over the land on the plaintiff's side of the fence. The court held that because the plaintiff's deed description did not contain the disputed land, Idaho Code § 5-208 did not apply and adverse possession had to be proved under Idaho Code § 210, involving oral claims of title. The court held that the plaintiff did not acquire title to the disputed land by adverse possession because the fence did not enclose the disputed land but was built to enclose the defendant's land and because the plaintiff's clearing of brush and maintaining of the fence were insufficient improvements to support adverse possession. **Persyn v. Favreau, 804 P.2d 327 (Idaho Ct. App. 1990)**.

BANKRUPTCY

GENERAL

AVOIDABLE LIENS. The debtors claimed their homestead as exempt under the federal exemption and attempted to avoid liens against the homestead to the extent the total liens exceeded the fair market value of the home. The court held that the debtors were not entitled to an exemption where the debtors had no equity in the home and, therefore, the debtors could not avoid the unsecured portion of the liens against the home. ***In re* Gaylor, 123 B.R. 236 (Bankr. E.D. Mich. 1991)**.

The debtors claimed an exemption for their homestead under Ohio Rev. Code § 2329.66 and sought to avoid a judicial lien against the homestead under 11 U.S.C. § 522(f). The court held that the Ohio exemption applied only where an actual sale or attachment was attempted, and therefore, the debtors could not avoid a judicial lien before sale or attachment was attempted. **Matter of Brown, 123 B.R. 260 (Bankr. S.D. Ohio 1990)**.

Under facts similar to *Matter of Brown, supra*, the court held that the debtors could avoid a judicial lien against their homestead even though the lien was enforceable only upon the sale of the homestead. ***In re* Serapiglia, 123 B.R. 481 (Bankr. E.D. N.Y. 1990)**.

DISCHARGE. The debtor sold, but failed to pay for, produce to a creditor which filed a timely notice of trust rights under the Perishable Agricultural Commodities Act. The creditor argued that its claim was nondischargeable because of the defalcation of the debtor as a fiduciary of the PACA trust. The court agreed and held that the PACA trust gives rise to a fiduciary duty on the debtor to promptly pay for produce because the trust arose immediately upon delivery of the produce. The court also noted similar holdings in cases involving trusts under the Packers and Stockyards Act. ***In re* Stout, 123 B.R. 412 (Bankr. W.D. Okla. 1990)**.

The debtor was a general partner in a limited partnership which operated a Christmas tree farm. The limited partners obtained state court judgments against the debtor for fraud, breach of fiduciary duty and breach of contract resulting from losses resulting from the partnership operations. The partners argued that the judgments were nondischargeable because of the debtor's defalcation while a fiduciary. The court held that the judgments were not nondischargeable because the debtor's status as a general partner did not give rise to a fiduciary duty. ***In re* Standard, 123 B.R. 444 (Bankr. N.D. Ga. 1991)**.

ESTATE PROPERTY. The debtor's interest in a retirement annuity was not excluded from estate property where the debtor could redeem the annuity for cash at any time. **Richardson v. TIAA/CREF, 123 B.R. 540 (E.D. N.C. 1991)**.

EXEMPTIONS. The debtor's interest in an ERISA qualified pension plan was not excluded from the bankruptcy estate, and the Missouri exemption for such plans was pre-empted by ERISA. ***In re* Green, 123 B.R. 327 (W.D. Mo. 1990), *aff'g* 115 B.R. 1001 (Bankr. W.D. Mo. 1990)**.

The debtors claimed an exemption for their homestead, listed the value of the homestead as $415,000, and claimed that the homestead was excluded from the estate because the trustee failed to object to the exemption and valuation within 30 days and the value of the homestead was less than the encumbrances plus the exemption plus the costs of selling the home. The debtors also argued that any post-petition appreciation of the homestead above $415,000 was not estate property. The court held that the costs of selling the home could not be considered in determining whether any value exists for the estate, the trustee may object to the valuation, but not the existence, of the homestead after the 30 day period and post-petition appreciation of the homestead is estate property. ***In re* Hyman, 123 B.R. 342 (Bankr. 9th Cir. 1991)**.

The debtor's interest in an ERISA qualified pension plan was excluded from estate property where the debtor could reach the funds in the plan only upon death, disability or reaching age 55. ***In re* Knowles, 123 B.R. 428 (Bankr. M.D. Fla. 1991)**.

The debtor owned an interest in a pension plan offered by the debtor's wholly-owned corporation. The court held that the pension plan was not a spendthrift trust because the corporate identity would be disregarded such that the debtor was the settlor of the fund. The debtor's interest in a Keogh plan and IRA were not exempt because they were not necessary for the debtor's support, considering the income from the debtor and the debtor's nondebtor spouse. **Matter of Velis, 123 B.R. 497 (D. N.J. 1991), *aff'g* 109 B.R. 64 (Bankr. D. N.J. 1989)**.

JURISDICTION. Trust funds established to pay benefits to agricultural workers filed claims against the debtor for failure to make payments for two months before filing bankruptcy. The lower courts had dismissed the cases, holding that bankruptcy courts have no jurisdiction to hear unfair labor practice cases. The appellate court held that federal courts have jurisdiction but that the bankruptcy court should determine whether it should abstain from hearing the case in favor of the state labor relations board. ***In re* Careau Group, 923 F.2d 710 (9th Cir. 1991)**.

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENT OF TAXES. Chapter 7 debtor not allowed to allocate payments made by trustee for federal employee withholding taxes. ***In re* Frank Meador Buick, Inc., 123 B.R. 213 (W.D. Va. 1989), *rev'g* 85 B.R. 392 (Bankr. W.D. Va. 1988)**.

AUTOMATIC STAY. The court held that a debtor may not enjoin the IRS from levying against the debtor's nondebtor spouse for joint taxes which are to be paid by the debtor's plan. ***In re* Hall, 123 B.R 441 (Bankr. N.D. Ga. 1990)**.

The Chapter 13 debtors were awarded attorney's fees where the IRS twice offset a prior deficiency against post-bankruptcy tax refunds even though the liability had been paid under the Chapter 13 plan. The court held that the IRS was not protected by sovereign immunity because the IRS had waived immunity by filing claims in the bankruptcy case. ***In re* Bryant, 91-1 U.S. Tax Cas. (CCH) ¶ 50,124 (Bankr. D. Kan. 1990)**.

CLAIMS. The IRS timely filed claims for withholding taxes against the Chapter 7 debtor but filed amended claims for similar taxes, including additional time periods, after the claims bar date. The court, *sua sponte*, raised the issue of the debtor's standing to challenge the late claims of the IRS because the debtor did not have a pecuniary interest in challenging the late claims. The court ordered a hearing for the debtor to respond to the issue of the debtor's pecuniary interest in the IRS late claims. ***In re* Olsen, 123 B.R. 312 (Bankr. N.D. Ill. 1991)**.

ESTATE PROPERTY. The court held that estimated tax payments made by the debtor within six weeks before filing bankruptcy were not property of the estate on the date of bankruptcy filing. ***In re* Halle, 91-1 U.S. Tax Cas. (CCH) ¶ 50,121 (Bankr. D. Colo. 1991)**.

NET OPERATING LOSSES. The debtor made the election to carry forward net operating losses on pre-bankruptcy and a post-bankruptcy income tax returns. The court held that the bankruptcy trustee could avoid the election so that the trustee could carry back the NOL for refunds. ***In re* Russell, 91-1 U.S. Tax Cas. (CCH) ¶ 50,128 (8th Cir. 1991)**.

PRIORITY. A 10 percent penalty assessed against the debtor for early distributions from an employee pension and profit-sharing plan was not entitled to priority as a tax because the penalty was punitive and noncompensatory. ***In re* Cassidy, 91-1 U.S. Tax Cas. (CCH) ¶ 50,120 (Bankr. D. Colo. 1991)**.

CONTRACTS

STATUTE OF LIMITATIONS. The plaintiffs entered into a geese raising and processing agreement with their cooperative under which the plaintiffs received partial payment for their geese with the remainder of the payment to be paid as all of the geese were marketed. The court held that the statute of limitations for a cause of action for breach of contract did not start until final payments were to be made. The court also upheld a jury verdict that the cooperative's president had authority to amend the contract to provide for the partial and deferred payments. **Schelske v. South Dakota Poultry Co-op., 465 N.W.2d 187 (S.D. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. The FmHA has issued interim rules implementing the changes to the lease-back/buyback program by adding a good faith eligibility criterion for applicants. Thus, "if a good faith determination was made in connection with primary servicing, then that determination will be binding for the former borrower's good faith determination for leaseback/buy back purposes." **56 Fed. Reg. 11350 (March 18, 1991)**.

DISASTER PAYMENTS. The plaintiff operated a farm which produced $1 million in gross income in 1988 and a grain elevator business which had gross income of $15 million. The plaintiff received disaster payments but was later asked to return the payments because the plaintiff's gross income exceeded $2 million, 7 U.S.C. § 1421 note. The court held that under the statute, the plaintiff's nonfarm income was included in the gross income where the farm income was less than half of the plaintiff's total gross income. **Vculek v. Yeutter, 754 F.Supp. 154 (D. N.D. 1990)**.

FARM LOANS. The CCC has adopted as final rules implementing the 1990 farm bill provision allowing "subsequent holders" of expired commodity certificates 180 days to exchange the certificates and obtain interest on the certificates as an original holder for 150 days. See Vol 1, p. 246. **56 Fed. Reg. 11014 (Mar. 21, 1991)**.

HIGHLY ERODIBLE LAND AND WETLANDS. The USDA has issued proposed regulations implementing the changes made by the FACTA 1990 to the highly erodible land and wetlands programs. See 1 *Agric. Law Digest* p. 209 (1990). **56 Fed. Reg. 9258 (March 5, 1991)**.

TOBACCO. The ASCS has issued proposed regulations implementing provisions of the Farm Poundage Quota Revisions Act of 1990 (Pub. L. 101-577) concerning burley tobacco marketing quotas. **56 Fed. Reg. 10820 (March 14, 1991)**.

FEDERAL ESTATE AND GIFT TAX

BASIS. The decedent was a nonresident alien married to a U.S. citizen and had established a revocable trust which owned stock in a foreign personal holding company (FPHC). At the decedent's death, the stock passed to a sub-trust. The IRS ruled that the basis of the stock to the sub-trust under Section 1014(b)(5) was the lower of the fair market value or the adjusted basis of the stock to the decedent at death. **Ltr. Rul. 9110019, Dec. 5, 1990**.

The grantor established a ten year trust with the grantor's children as remainder holders and trust property consisting of stock in the grantor's wholly-owned corporation. At the end of the ten years, the trust passed to the remainder holders or their issue. If the grantor died before 10 years, the grantor had the power to appoint trust property. The IRS ruled that the transfer to the trust was a completed gift. The IRS also ruled that the basis of the stock to the beneficiaries after the end of the ten years was the basis in the hands of the grantor increased by an amount which bore the same ratio to the amount of gift tax paid as the net appreciation of the gift bore to the amount of the gift. **Ltr. Rul. 9109027, Nov. 30, 1990**.

DEDUCTIONS. The decedent's estate elected to pay federal and state estate taxes in installments, but the state did not allow a deduction for the interest paid on deferred payments of the state estate tax. The IRS ruled that the interest paid on the deferred state estate tax was deductible for federal estate tax purposes because the interest paid was an allowed administrative expense under state law. **Ltr. Rul. 9106005, Oct. 26, 1990**.

GENERATION SKIPPING TRANSFER TAX. Under the decedent's will, two sets of trusts were established for the decedent's children: one set was established by testamentary exercise of a limited power of appointment of property of a 1967 GSTT-exempt trust; the other set was established by testamentary bequests from the estate of the decedent. The trustees of the two sets of trusts proposed to consolidate the trusts with provisions to accommodate the different remainder interests of the trusts. The IRS ruled that the consolidation did not subject the 1967 portion of the trust to GSTT. **Ltr. Rul. 9109022, Nov. 30, 1990**.

The grantor established a trust with a three year annuity to a charitable organization and income interests to the grantor's children and grandchildren. The IRS ruled that the GSTT exemption was determined by increasing the GSTT exemption of $1 million plus interest determined at the rate for the charitable lead annuity for three years. **Ltr. Rul. 9109028, Nov. 30, 1990**.

The decedent's will established a residuary trust for two persons with remainders to the beneficiaries' children. One beneficiary had died after the decedent and the estate proposed to disclaim a portion of that beneficiary's portion of the trust. The IRS ruled that the $1 million GSTT exemption will be allocated by a fraction with the numerator of $1 million and a denominator of the value of the disclaimed property. **Ltr. Rul. 9109058, Dec. 6, 1990**.

At the decedent's death, the property in a revocable trust passed to an irrevocable trust with the decedent's siblings, the decedent's children and any living issue of those persons as beneficiaries. Income from the trust could only be paid to qualifying higher eduction institutions for tuition for the beneficiaries. The IRS ruled that the testamentary transfer to the trust was not subject to GSTT because at least one of the beneficiaries, the decedent's siblings, was not a skip person. In addition, the payments to the educational institutions were not subject to GSTT. **Ltr. Rul. 9109032, Nov. 30, 1990**.

The IRS has issued guidance on computing the income tax deduction for beneficiaries of GST trusts who paid GSTT. **Ann. 91-43, I.R.B. 1991-11, 29**.

GIFT. The grantor established an irrevocable trust for a spouse with income to be distributed at least quarterly. The spouse had the lifetime power to appoint trust property with the consent of a sister and the testamentary power to appoint trust property. Any remainder is to pass to the spouse's children. The IRS ruled that the trust was eligible for the gift tax marital deduction. **Ltr. Rul. 9109029, Nov. 30, 1990**.

The grantor established a ten year trust with the grantor's children as remainder holders. At the end of the ten years, the trust passed to the remainder holders or their issue. If the grantor died before 10 years, the grantor had the power to appoint trust property. The IRS ruled that the transfer to the trust was a completed gift which could be split by the grantor and spouse. **Ltr. Rul. 9109027, Nov. 30, 1990**.

GROSS ESTATE. The grantor established an irrevocable trust for a spouse with income to be distributed at least quarterly. The spouse had the lifetime power to appoint trust property with the consent of a sister and the testamentary power to appoint trust property. Any remainder was to pass to the spouse's children. The IRS ruled that the trust was not included in the grantor's gross estate unless the spouse appointed trust property to the grantor. In addition, the trust property would be includible in the spouse's gross estate unless appointed to someone else. **Ltr. Rul. 9109029, Nov. 30, 1990**.

MARITAL DEDUCTION. The decedent's will established a trust which was intended to qualify as a charitable unitrust with the surviving spouse as the noncharitable beneficiary but the trust failed to contain language pertaining to selection of alternate charitable remainder beneficiaries. The trustee proposed to amend the trust to include the provisions. The IRS held that the trust was amendable and with the amendments, the surviving spouse's interest in the trust would qualify for the marital deduction and the estate could take a charitable deduction for the value of the charitable remainder interest. **Ltr. Rul. 9109054, Dec. 5, 1990**.

The decedent bequeathed the residue of the estate to a marital trust in which income was to be distributed to the surviving spouse, the trustee could retain unproductive assets, the surviving spouse could make gifts of trust principal with consent of the trustee, and at the death of the surviving spouse, all trust income and principal were to be distributed to the surviving spouse's estate. The IRS ruled that the surviving spouse's interest in the trust was eligible for the marital deduction. **Ltr. Rul. 9109003, no date given**.

POWER OF APPOINTMENT. Under the terms of a trust created by grandparents, the current beneficiaries had the power to terminate the trust if all agreed to the termination. The power to terminate the trust lapsed for each beneficiary at that beneficiary's death and did not pass to heirs of the beneficiary who might receive the beneficiary's share of the trust. The IRS ruled that the current beneficiaries do not have a general power of appointment over their shares of the trust and that if the beneficiaries decide to terminate the trust, no gift tax liability will result. **Ltr. Rul. 9110023, Dec. 6, 1990**.

The taxpayer established a revocable trust which, upon the death of the taxpayer, passed to two trusts. Under the provisions of one of these trusts, if the beneficiary died before reaching age 35, the beneficiary had the power to appoint so much of the trust property to the beneficiary's creditors as would otherwise have passed to a skip person and did not exceed the lesser of the amount not exempt from GSTT or an amount which, when added to the beneficiary's estate, would cause $1 to be taxed at the highest rate. The trust also provided that no power was granted unless the sum of (1) the federal and state taxes imposed if the property was subject to the power of appointment, (2) the GSTT payable if the property was subject to the power of appointment, and (3) the excess of the liabilities over the beneficiary's assets (excluding the power of appointment) was less than or equal to the GSTT which would be payable if the power of appointment was not granted. The IRS ruled that the beneficiary would have a general power of appointment but that because the conditions withdrawing the power could exist prior to the beneficiary's death, the property may not be includible in the beneficiary's estate but would be includible to the extent the power was granted under the trust provisions. **Ltr. Rul. 9110054, Dec. 12, 1990**.

QUALIFIED DOMESTIC TRUST. The decedent's surviving spouse entered into a settlement with other heirs to have inherited property placed in trust. The trustee must be a citizen or domestic corporation of the U.S. and the trust could invest only in property in the U.S. The trustee was required to comply with all regulations under Section 2056A. The beneficiary was to receive all income at least annually and had the power to require the trustee to invest in productive property. The remainder of the trust passed to the estate of the surviving spouse. The IRS ruled that the trust was a qualified domestic trust if the proper election is made. **Ltr. Rul. 9109021, Nov. 30, 1990**.

SPECIAL USE VALUATION. The decedent's estate tax return checked the box indicating that the estate elected special use valuation of the decedent's farmland, but the return did not include (1) the decedent's name and taxpayer identification number, (2) the adjusted value of the land, (3) the personal property included in the election, (4) identification of the persons taking an interest in the land, (5) affidavits of the activities constituting material participation, (6) a legal description of the land and (7) fair market appraisals of the land. The court held that the estate failed to substantially comply with the special use valuation election requirements. **Collins v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 60,060 (W.D. Okla. 1991)**.

TRUSTS. The taxpayer proposed to establish an irrevocable 5-year trust with the taxpayer as income beneficiary. The trust was funded with the taxpayer's business assets and assumed an existing mortgage on the property which exceeded the taxpayer's adjusted basis in the property. The IRS ruled that the taxpayer would not recognize any gain from the transfer and the basis of the property to the trust would be the taxpayer's adjusted basis in the property at the time of the transfer plus the amount of gift tax paid. **Ltr. Rul. 9109033, Nov. 30, 1990**.

FEDERAL INCOME TAXATION

BAD DEBTS. Taxpayer purchased a 49 percent interest in a corporation owning a car sales business. The taxpayer purchased the interest in order to rehabilitate the business and resell the business to the other stockholder at a profit. During the course of business, the taxpayer loaned money to the corporation which was entered as a loan on the corporate books and for which notes were issued. The court held that the loss on the loans when the business went out of business was a deductible bad debt loss where the court found that the taxpayer was in the business of buying businesses with the intent to resell them for a profit. ***In re* Farrington, 91-1 U.S. Tax Cas. (CCH) ¶ 50,115 (N.D. Okla. 1991), aff'g 111 B.R. 342 (Bankr. N.D. Okla. 1990)**.

CASUALTY LOSS. The taxpayers were denied casualty loss deductions for flood damage to their home and personal property where the taxpayers failed to prove that their loss exceeded the insurance proceeds. **Bruhns v. Comm'r, T.C. Memo. 1991-88**.

C CORPORATIONS

ALTERNATIVE MINIMUM TAX. The IRS has adopted as final regulations governing determination of adjusted current earnings for purposes of determining alternative minimum tax for corporations. **56 Fed. Reg. 11122 (March 15, 1991)**.

DISCHARGE OF INDEBTEDNESS. The IRS has issued proposed regulations providing that the acquisition of indebtedness by a person related to the debtor from a person who is not related to the debtor results in discharge of indebtedness income to the debtor based on the fair market value of the indebtedness at the time it was acquired by the related person. The rule also applied where the creditor becomes related to the debtor, if (1) the creditor acquired the indebtedness less than six months before becoming related to the debtor, or (2) on the day the creditor becomes related to the debtor, the indebtedness of the debtor represents more than 25 percent of the fair market value of the creditor's assets or the assets of all persons related to the debtor after the creditor becomes related to the debtor. If the creditor becomes related to the debtor between 6 to 24 months before becoming related to the debtor, the rule applies unless the creditor can demonstrate that the indebtedness was not acquired in anticipation of the creditor becoming related to the debtor. The rule does not apply to indebtedness (1) acquired by the debtor with a maturity date within one year of the indebtedness being acquired by a related person, if the indebtedness is retired on that date, or (2) acquired by a dealer of securities in the ordinary course of business. **56 Fed. Reg. 12135 (Mar. 22, 1991), adding Prop. Treas. Reg. § 1.108-2**.

GOVERNMENT AGENCIES. A state agricultural marketing order administrative board was ruled not subject to federal income tax because the board was not a separate entity but was an integral part of the state. **Ltr. Rul. 9107032, Nov. 21, 1990**.

HOME OFFICE EXPENSE. The taxpayers were not allowed office rental expense deductions for their home office for their insurance and nutritional program sales businesses because the taxpayers failed to maintain sufficient records of the rental payments. The taxpayer were also allowed a deduction for utility costs only for the portion of the home exclusively and regularly used in the businesses. **Steines v. Comm'r, T.C. Memo. 1991-103**.

The taxpayers were not allowed ACRS depreciation on the portion of their home used in their Amway business because the home was placed in service when purchased, prior to the effective date of ACRS, and not when first used in the business. **Jumper v. Comm'r, T.C. Memo. 1991-86**.

INTEREST RATES. The IRS has announced, for the second quarter of 1991, that the interest rate on underpayments of taxes is 10 percent, on overpayments is 9 percent, and on underpayments for large corporations is 12 percent. **Rev. Rul. 91-20, I.R.B. 1991-11, 7**.

INVESTMENT TAX CREDIT. The taxpayer was not allowed investment tax credit for housing modules built by the taxpayer to house construction workers at temporary sites. **Hannaman v. Comm'r, T.C. Memo. 1991-96**.

LOSSES. A partner's share of partnership losses was held nondeductible where the partnership business, marketing of a new energy product, had little or no expectation of making a profit and was entered into primarily for tax deduction purposes. The partnership offering memoranda warned investors of the poor profit expectations and claimed tax benefits exceeding four times the investment of partners. **Karr v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 50,113 (11th Cir. 1991), *aff'g* Smith v. Comm'r, 91 T.C. 733 (1988)**.

S CORPORATIONS

NET OPERATING LOSSES. The taxpayer corporation constructed a condominium building while a C corporation and had deductible expenses which produced no tax benefit. After the corporation elected S corporation status, some condominium units were sold and the corporation deducted the previous expenses, arguing that the tax benefit rule allowed the deductions. The court held that the corporation was attempting to carry C corporation net operating losses forward against S corporation income, which was not allowed under Section 1371(b)(1). The court also held that the tax benefit rule did not operate to negate the statutory provision and noted that the losses could be deductible if the corporation reverts to C corporation status within 15 years of the losses. **Rosenberg v. Comm'r, 96 T.C. No. 15 (1991)**.

SECOND CLASS OF STOCK. An S corporation established a deferred compensation plan for key employees. Depending upon the vesting event, the employee was to receive a share of appreciated value of the corporation. The IRS ruled that plan did not create a second class of stock. **Ltr. Rul. 9109025, Nov. 30, 1990**.

TERMINATION. The IRS ruled the termination of an S corporation's election as inadvertent where a shareholder transferred shares to eligible Subchapter S trusts but the beneficiaries failed to file a timely election. **Ltr. Rul. 9110035, Dec. 10, 1990**.

In the last year the corporation was a C corporation, the corporation retained earnings and profits to cover future expenses. After the corporation elected S corporation status, the corporation's business was inactive and the only income was from interest on the retained C corporation earnings deposited in an interest bearing account, thus causing the termination of the Subchapter S election. The IRS ruled that the termination was inadvertent but required the corporation to distribute the earnings and to terminate the interest bearing accounts. **Ltr. Rul. 9110036, Dec. 10, 1990**.

TRUSTS. The decedent established a 10-year trust which held S corporation stock. After the decedent's death and until the termination of the trust, the beneficiaries were the decedent's children, each with an equal share of the trust income which was to be distributed at least quarterly. The trustee had the power to terminate the trust at any time and distribute the property to the beneficiaries. The IRS ruled that each beneficiary's share of the trust would be treated as a separate trust eligible as a Subchapter S trust. **Ltr. Rul. 9110033, Dec. 7, 1990**.

WAGES. The taxpayer was a licensed public accountant who structured the business as an S corporation with the taxpayer and spouse as the only officers and shareholders. The corporation's services were performed only by the taxpayer. The court held that the amounts paid by the corporation to the taxpayer were wages subject to FICA and FUTA taxes and not dividends. **Spicer Accounting, Inc. v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50103 (9th Cir. 1990)**.

SAFE HARBOR INTEREST RATES

APRIL 1991

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	6.85	6.74	6.68	6.65
110% AFR	7.55	7.41	7.34	7.30
120% AFR	8.25	8.09	8.01	7.96
		Mid-term		
AFR	7.88	7.73	7.66	7.61
110% AFR	8.68	8.50	8.41	8.35
120% AFR	9.50	9.28	9.17	9.11
		Long-term		
AFR	8.24	8.08	8.00	7.95
110% AFR	9.09	8.89	8.79	8.73
120% AFR	9.94	9.70	9.59	9.51

SELF-EMPLOYMENT. The IRS has ruled that a practicing attorney received net income from self-employment from acting as a trustee for twelve trusts and as an executor of an estate, although two of the trusts belonged to the attorney's family, none of the trusts operated a business, and the attorney did not solicit business as a trustee. **Ltr. Rul. 9107009, Nov. 14, 1990**.

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SECURED TRANSACTIONS

CONVERSION. The debtor had granted a security interest to the FmHA in all crops grown in 1982. The defendant had purchased much of the debtor's 1982 crop of vegetables but the debtor failed to remit the proceeds to the FmHA. In negotiations with the debtor, the FmHA agreed to release its security interest in the 1982 proceeds and substitute a lien on the debtor's 1983 crop. The court held that the release extinguished the 1982 security interest and the defendant was not liable for conversion of the 1982 crops. **U.S. v. Georgia Vegetables Co., Inc., 123 B.R. 456 (M.D. Ga. 1990)**.

The FmHA held a perfected security interest in the debtor's cattle which were sold through the defendant's auction. The defendant argued that the FmHA had consented to the sales, thus releasing the security interest, because the loan agreement allowed a debtor to sell collateral and then seek approval for use of the proceeds. The court did not expressly rule on the issue of whether FmHA regulations or the U.C.C. applied to determine whether consent was given by the FmHA but decided that under both sets of rules, the FmHA did not give prior consent to the sales. In addition, the court found no implied consent from a course of dealing because no prior sales had occurred. **United States v. Winter Livestock Comm'n, 924 F.2d 986 (10th Cir. 1991)**.

FEDERAL FARM PRODUCTS RULE. As a means for providing actual notice to buyers of farm products of security interests in those products, the Missouri Bankers Ass'n has established the MBA Bankers Service Corporation which provides a unique Farm Product Security Notification System. The system provides forms for security interest holders to fill out and publishes the security interests to buyers, commission merchants and selling agents of Missouri farm products.

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